REVISION ENERGY

May 10, 2023
Senator Henry Ingwersen, Chair
Representative Bill Pluecker, Chair
Committee on Environment and Natural Resources
100 State House Station
Augusta, Maine 04333

Re Testimony on LD 1881, "An Act Regarding Compensation Fees and Related Conservation Efforts to Protect Soils and Wildlife and Fisheries Habitat from Solar and Wind Energy Development and High-Impact Electric Transmission Lines Under the Site Location of Development Laws"

Senator Ingwersen, Representative Pluecker, and members of the joint standing committee on Agriculture, Conservation, and Forestry

Founded right here in Maine twenty years ago, ReVision Energy is a local, employee owned, certified B Corporation clean energy construction company with over 385 employees across our five branches in New England, with 220 co-owners in Maine at our Montville and South Portland locations Our mission is to lead our community in solving the environmental problems caused by fossil fuels while alleviating social injustice to ensure New England is a thriving place where our children, grandchildren, and future generations can enjoy a clean environment and just society In 2022 alone, we installed 10,000 kilowatts of residential solar and nearly 24 megawatts of commercial solar, eliminating over 950 million pounds of future $CO^2$ emissions While we are known for our residential solar as well as battery storage, heat pump, and EV charging installations, we also construct larger commercial systems and have completed or are currently constructing 20 projects above 1 MW across the state, with sizes ranging from 4 to 28 acres, including multiple projects on farms

While ReVision Energy respectfully encourages the committee to oppose LD 1881, we want to express that we have no doubt this legislation is well intentioned, and further, we share many of the same goals with the leaders and supporters of this bill Our mission is to enable a transition off of fossil fuels, and to do that, we believe we need to rapidly deploy clean energy And while we should enable precautions to preclude significant environmental degradation, we also believe we should not let perfect be the enemy of the good

In that regard, we encourage this committee to not lose sight of the big picture We are currently living in a world where rapid decarbonization is critical to avoid the most catastrophic impacts of the climate crisis We have to remember the scale of the problem that we all seek to address, and we should not place barriers in front of development that enables a clean energy transition while we determine how to mitigate and offset every potential localized impact through the creation of projects that protect exactly equal lands consisting of the same soils in the same area with the same habitat While we understand the principle, we feel this could easily result in a complex, expensive, and lengthy permitting regime And while we delay clean energy projects, for example, to ensure a small regional wildlife habitat corridor continues, we may see state-sized habitat loss regionally due to the overall impacts of climate change and our inability to rapidly transition off fossil fuels Put simply, let's not fight so hard to protect one single acre from development that we lose sight of the fact that we may lose the whole planet to climate change

We believe this legislation will introduce new costs, regulatory hurdles, and delays to renewable energy development, which is not prudent given our state's codified climate goals The loss of

valuable agricultural land or wildlife habitat is not a material issue created by the solar energy industry, and we encourage this committee to avoid singling out one type of development with burdensome permitting processes Conventional solar construction methods leave topsoil in its original condition, with the exception of access roads and equipment pad locations that represent less than five perfect of the project footprint as compared to the construction of buildings and affiliated access roads and parking lots that require the excavation and removal of all valuable topsoil for engineered foundations Solar construction is ultimately driving posts into the ground and leaving most soils as is while revegetating the area and at times even implementing dual-use, collocation with livestock, and wildlife fencing Currently, there are not a significant quantity of projects in the state displacing food production or high-value crops, and when projects are sited on farmland, they are located on hayfields or adjacent lands that are not in any form of productive use Even more, solar projects are not permanent land conversions and do not preclude agriculture as a future use given the soil remains intact and strict decommissioning laws exist to ensure any disturbed land is returned to viable conditions

Our concerns with the bill and recommended changes are as follows

Rulemaking Overall, the lack of understanding of what final rules could look like pursuant to Section 3 brings significant uncertainty to developers of projects While understanding the legislature is entrusting program design and development within agencies carrying expertise, the lack of direction in regards to rulemaking within this legislation is concerning For example, in Section 1, Chapter 15, Subsection 361, Section 2, where DACF, with consultation from GEO, is required to establish definitions and a process for identifying, verifying, and assessing impacts on soils, it is unclear if this direction constitutes a formal rulemaking in which the public—including developers—will have a chance to provide feedback

Should this legislation move forward, we recommend providing further guardrails for agencies undertaking rulemaking regarding the issues we outline below costs, fee design, dispute resolution, mapping, and project timelines Without this clarity, we believe that the rulemakings blur the line between major substantive rules and routine technical rules Note routine technical rules, for example, are rules that set a fee within a range specified by statute, but that is precisely the lack of clarity we are concerned with here— there is no cost range within the legislation Therefore, we respectfully request that this body asks for the opportunity to review final rules prior to adoption Additionally, we remind this committee that uncertainty regarding the permitting environment certainly impacts the overall business environment in our industry

Costs The legislation provides no guardrails or comparisons to existing programs for potential costs, which makes it extremely hard for a developer to understand how such regulations could impact project economics and therefore viability Not surprisingly, we are very familiar with wetland mitigation fees, which can currently result in a six-figure fee for a one-acre project Would this legislation implicate a fee of a similar magnitude? We respectfully ask that you review current requirements on developers and set guardrails on appropriate costs to ensure projects do not become uneconomical at a time when the state is pushing to keep energy costs down We need to be incredibly thoughtful regarding the obstacles we add in permitting as ultimately ratepayers fund these additional costs To be clear, the idea of 'free additional monies' from developers or investors is a myth and inconsistent with how markets work If a project costs more to build, those costs are ultimately passed down to offtakers whether via power purchase agreements or more generally spread out across ratepayers Additional permitting costs will result in more expensive solar or wind electricity costs

Fee Design We believe the fee design could also use additional legislative guardrails Specifically, the use of fair market value should steer clear of additional downstream requirements such as the need for appraisals to be performed for each project We suggest requiring a simple fee calculation and implementation in a similar manner to wetland in-lieu fees which utilizes multipliers for each county based on overall land values Additionally, we urge this committee to amend the language on Page 1 in lines 30-31 (Section 1, Chapter 15, Subsection 361, Section 3) to adjust the definition of developed area from 'all of the land you occupy' to 'the areas in which the developer is removing topsoil ' This type of development is not a massive parking lot—it is a very different type of construction that ultimately has a cumulative low impact on topsoil We do appreciate the indication in both programs that mitigation strategies previously noted, such as dual-use or wildlife fencing could reduce fees

Mapping In our experience, we have seen a disconnect between the colloquial understanding of high value agricultural lands and technical governmental definitions In many cases, NRCS maps are overdrawn and outdated, which could result in an inaccuracy of corresponding fees and/or putting the burden of proof upon the applicant and thus requiring the developer to conduct and/or wait until a field audit is conducted, leading to significant project delays We are also unclear if Section 1 requires the development of new maps or the verification processes as to whether NRCS classifications are accurate If the latter is correct, we respectfully ask that this process includes an opportunity for public comment

Dispute Resolution Given the agencies are ultimately responsible for program design, the legislation does not ensure an effective dispute resolution process for developers We recommend specifically requiring inclusion of a clearly defined dispute resolution process that is robust enough to enable resolution among conflicting perspectives in a manner that will not require significant capital, technical expertise, and/or lengthy project delays To the final point, we are concerned with current agency bandwidth and question if agencies have the ability to manage additional programs and dispute resolution process with current staffing We repeatedly hear agencies discuss capacity concerns, and we must ensure we can process disputes in a timely way without increasing the soft costs of project risk and time Essentially, we seek clarity regarding how onerous it would be to overturn a classification should a developer disagree with mapping, especially knowing maps have historically proven to be out of date and/or inaccurate

Project Timelines We ask the committee to recognize solar project development timelines and ensure that rulemaking will not undermine existing projects Our industry is constantly impacted by a changing regulatory environment, which is a hinderance on our clean energy transition as it ultimately can change project economics and viability A project larger than three acres takes years of development and six to twelve months to commence construction, so a near term effective date would inevitably impose a retroactive requirement on many mature projects that have already expended significant development resources to date Should this legislation proceed, we recommend adding guardrails to ensure a graduated programmatic roll out

Current Mitigation & Decommissioning All projects are currently required to have a decommissioning plan as part of the project application which requires the developer to remove all physical components of energy development return the land to its original condition On agricultural lands, this requirement is already heightened, requiring project removal and soil restoration to a depth of 48 inches, twice the depth of the regular requirement to the depth of 24 inches Decommissioning also includes grading and revegetation of all earth disturbed This raises a key concern—as developers, we are obligated to return the land post-project to its original condition for future use for agriculture or habitat or otherwise, but at the same time, this legislation is suggesting that we should additionally pay for compensation projects including

conservation easements that ultimately protect similar lands in perpetuity to offset our 30-year impact While we understand the intention, this does not appear to be a proportionate requirement

In 2019, this body passed the bipartisan bill LD 1711 to expand solar energy development in Maine to achieve our codified decarbonization goals and realize the benefits of clean energy Over the past four years, we have been actively engaged in efforts to reform our state's net energy billing program, especially to work through the real concerns regarding programmatic costs While we work diligently to come to the table to iterate on solar policy as the market develops, we, at the same time, see many efforts to burden these very projects with more oversight and stringent requirements that make project development more expensive We have to grapple with this reality and again revisit the apex issue of climate change and reset our priorities how can we enable a rapid transition to clean energy?

Thank you for your consideration of our perspective We welcome further discussion, and we are available to address any questions you may have

Sincerely,

Lindsay Bourgoine
Director, Policy & Government Affairs
ReVision Energy
207 819 5663